



May 1, 2000

Mr. Mark C. Goulet  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2000-1690

Dear Mr. Goulet:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 134683.

The Leander Independent School District (the "district") received a request for correspondence between any organization headed or founded by a certain television evangelist and any member of the district's board of trustees or other district official relating to religious activities in the district. You have submitted a document that the district deems to be responsive to the request. You assert that the submitted document does not represent public information that is subject to the Act. Alternatively, you claim that the submitted document is excepted from disclosure under section 552.107 of the Act. We have considered your arguments and have reviewed the information you submitted.

You inform this office that the submitted document is a letter from a legal organization and that it is addressed to an individual member of the district's board of trustees. You assert that the letter represents information that was obtained by the trustee in her individual capacity and on her own initiative and not on behalf of the school board or the district. You argue that information collected by an individual trustee and not at the direction of the school board should not be classified as public information. You contend that the letter is not "information . . . collected, assembled, or maintained under a law or ordinance . . . by a governmental body" and therefore is not "public information" that is subject to disclosure under the Act. *See* Gov't Code §§ 552.002(a), 552.021.

Section 552.002(a) of the Act defines public information as follows:

(a) In this chapter, 'public information' means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). In distinguishing between personal records and public information that is subject to the Act, this office has considered a variety of factors. *See generally* Open Records Decision No. 635 at 2-7 (1995). These factors include the identity of the author of the information, the nature of its contents, its purpose or use, who has possession of or access to it, and whether its creation was necessary to or in furtherance of official business. *Id.*

In this instance, the information in question is a five-page letter that is addressed to the trustee in her official capacity as a member of the school board. The letter is titled "Re: Prayer at school board meetings." It states that the letter was prepared in response to the board member's request for information about the constitutionality of opening and closing meetings of the school board with prayer. In light of the origin, contents, and purpose of the letter, we believe that it represents information that the board member, acting in her official capacity, solicited for prospective use in connection with the school board's transaction of official business. Based on these considerations, we are persuaded that the submitted letter represents public information that is subject to disclosure under sections 552.002 and 552.021 of the Act.<sup>1</sup>

Accordingly, we will consider whether the submitted letter is excepted from disclosure under section 552.107 of the Act. Section 552.107(1) excepts from required public disclosure "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]" Gov't Code § 552.107(1). Thus, section 552.107(1) protects information that is within the ambit of the attorney-client privilege. *See* Open Records Decision Nos. 630 at 3 (1994) (stating that as construed by this office, section 552.107(1) essentially incorporates the attorney-client privilege as set out in the Texas and federal rules of evidence and interpreted

---

<sup>1</sup>As you rely on *Keever v. Finlan*, 988 S.W.2d 300 (Tex. App. -- Dallas 1999, pet. dismissed), we have carefully reviewed that opinion. It reflects that Finlan had included a request for certain election-related records in a letter addressed directly to Keever as a school board trustee. *Id.* at 304. The court framed "[t]he dispositive inquiry [a]s whether Finlan was entitled to a writ of mandamus against Keever." *Id.* at 305. It specifically declined to consider whether the requested records were subject to the Public Information Act. *Id.* ("whether the records are public information is an issue we need not decide"). The court held that mandamus did not lie under the Act to compel disclosure of the requested records by Keever, as he was neither a governmental body nor the custodian of records for the school district. *Id.* Here, in contrast, the request for information was addressed to the school district itself, and the threshold question is whether the submitted letter represents public information that the district must release to the requestor unless an exception to disclosure is applicable.

by state and federal courts), 574 at 2-5 (1990) (delineating extent of section 552.107(1)'s incorporation of attorney-client privilege). Based on your representations and our review of the submitted letter, we do not believe that it is protected by the attorney-client privilege. *See also* Tex. R. Evid. 503(a)(5); Open Records Decision No. 658 at 7 (1998). We therefore conclude that the letter is not excepted from public disclosure under section 552.107(1).

In summary, the submitted letter represents public information that is subject to disclosure under the Act. The letter is not excepted from disclosure under section 552.107. Accordingly, the district must release the letter to the requestor. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

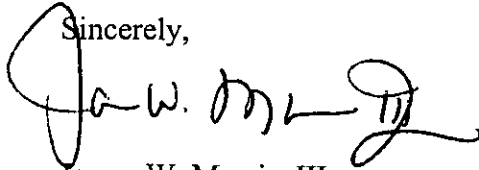
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ljp

Ref: ID# 134683

Encl. Submitted documents

cc: Mr. Howard Thompson  
The Texas Atheist Newsletter  
P.O. Box 1782  
Georgetown, Texas 78627  
(w/o enclosures)